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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,511	04/01/2004	Huw Edward Oliver	300203615-4	1299

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EXAMINER	
CHERY, DADY	

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
01/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/815,511	OLIVER ET AL.	
	Examiner	Art Unit	
	Dady Chery	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4 and 11-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-4 and 11-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This communication is responsive to the amendment filed on 11/20/2007.

Response to Arguments

1. Applicant's arguments received on October 25 have been fully considered but they are not persuasive because the cited references disclose the claimed invention as set forth in the previous Office Action. Therefore, finality of this Office Action is deemed proper in view of the following disclosure.

The arguments on page 8 to 11 of the Remarks are not persuasive. The claims are not patentable.

Regarding claims 1, 5, 11, 16 and 17, the applicants argue saying, "first computer operating a process, in cooperation with a third computer, for managing a second computer entity", "the first computer entity determining from a policy determined by a third computer entity, and from a local policy, a network management policy to be applied to a second computer entity by the second computer entity" and "the Pabla et al. patent, the vote is being cast by users of a computer, i.e., humans, and therefore, that the Pabla et al. patent does not disclose applying a voting protocol in which the first and third computer entities vote".

Examiner respectfully submits in no way the specification discloses, "operating a process, in cooperation with a third computer entity of a peer to peer network, for managing second computer entity", let alone "in cooperation with a third computer entity". Yes, the specification discloses a computer entity provides resources to another

computer in the network, and is able to use resources of the network (or another computer in the network) based on policy or policies. Also, the specification describes computer entities cooperate to vote for subordinating a particular computer entity in the network (e.g. see page 9, lines 9-10). The Examiner doesn't find the newly amended limitations in the specification and submits that the specification doesn't disclose as specific as the amended limitations. Appropriate correction is required.

As explained above, the Applicants argue based on the newly added limitations, "... in cooperation with a third computer entity..." and "... policy determined by third computer entity, and local policy...". Pabla discloses that the computers or peer devices cooperate, communicate manage each other or use one another's resource via a peer-to-peer platform may do so by following a set of rules and conventions or policy (col. 12, lines 60-62; col. 13, lines 51-53; col. 18, lines 17-39, 43-50; col. 19, lines 32-39; col. 22, lines 17-21). Pabla further discloses a common policy is adapted by each of the peers or computer entities such that the peers appear as a single distribution system and the policy is to be followed by each Of the peer group (col. 13, lines 6-12; col. 17, lines 23-34; col. 21, lines 13-16; col. 24, lines 15-23; col. 18, lines 55-59). That is, each of the peer group share policies and cooperate in managing each other. A third computer entity can be any peer that is cooperating with the first peer for sharing each others' resources (see figs. 1B, 4, 5 and 10). Likewise, the specification doesn't specify saying third computer entity. It generally explains a computer entity participates in a peer to peer network of a plurality of computer entities. Therefore, Applicants arguments are not persuasive.

Regarding, "the Pabla et al. patent, the vote is being cast by users of a computer, i.e., humans, and therefore, that the Pabla et al. patent does not disclose applying a voting protocol in which the first and third computer entities vote" Pabla doesn't explain that users cast the vote. The Applicants cited col. 18, line 28 and col. 24, line 22 read as "... policies may enforce a vote, or alternatively may elect one or more designated group representatives to accept or reject..." and "...the policy (may be required of all members) to vote for new membership approval" do not indicate the users participate in the vote.

Therefore, with all due respect, the cited cols. and lines do not indicate that the members are in fact users or humans. The Examiner believes that the members are the peers, which in this case are the computer devices (see fig. 1B, "peer devices").

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "a data storage media comprising program " is not being executed by a computer. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Data storage does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and

constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 - 4 ,11-16 and 18 -22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim of copending Application No. 10/815512.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Regarding claims 1, 11, 16 and 17, "operating a process, in cooperation with a third computer entity of said peer to peer network, for managing said second computer entity" and/or "managing or participate in management of a second computer entity in said peer to peer network, in cooperation with a third computer entity in said peer to peer network" are not found in the specification. The pacification doesn't even mention a third computer entity. The specification explains the computers cooperate to vote. It doesn't as specific as the newly amended limitations.

3. Regarding claim 5, "from a third computer entity in said peer to peer network, a message describing policy determined by said computer entity for management of said second computer entity; and determining from said policy determined by said third computer entity" is not disclosed. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 11-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Pabla et al. (US 7,127,613 B2).

Regarding claim 1, Pabla discloses a method performed by a first computer entity (see Figs. 1A and 1B): operating a peer to peer protocol for enabling said first computer entity to utilise a resource of a second computer entity of in a peer to peer network, and for enabling said second computer entity to utilise a resource of said first computer entity in said peer to peer network (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and operating a

process, in cooperation with a third computer entity of said peer to peer network, for managing said second computer entity (col. 12, lines 60-62; col. 13, lines 51-53; col. 18, lines 17-39, 43- 50; col. 19, lines 32-39; col. 22, lines 17-21; col. 1, lines 32-34), wherein said process is automatically invoked whenever said first computer entity takes part in said peer to peer network using said peer to peer protocol (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43, illustrates by means a vote, automatically, a peer represents to manage the other computers. Also each of the peers

has its own content management services 222 to manage and facilitate content sharing using the peer group sharing protocol e.g. see co. 21, lines 13-16).

Regarding claim 2, Pabla discloses said process comprises: determining a policy by which said first computer entity will interact with said second computer entity (col. 13, lines 9- 12, 51-66; col. 21, lines 56-57).

Regarding claim 3, Pabla discloses said process comprises: adopting a policy towards said second computer entity (col. 13, lines 55-57), wherein said policy is selected from a set of pre-determined polices for determining a relationship between said first computer entity and said computer entity (col. 17, lines 44-63; col'. 18, lines 17-18; col. 19, lines 15-20; col. 20, lines 39- 43; col. 23, lines 59-col. 24, line 2 ... etc.).

Regarding claim 11, Pabla discloses a peer to peer networking component for allowing said first computer entity to engage other computer entities in a peer to peer network on a peer to peer basis (col. 12, lines 36-67; col. 20, lines 33-43; col. 25, lines 44-52; col. 15, lines 16-19); and a network management component for enabling said first computer entity to participate in management of a second computer entity in said peer to peer network (Fig. 13; col. 20, lines 58- 63), in cooperation with a third computer entity in said peer to peer network, wherein said network management Component is configured to operate automatically, whenever said peer to peer networking component operates to allow said computer entity to take part in said peer to peer network (Fig. 13; col. 21, lines 13-16; col. 19, lines 32-39;).

Regarding claim 12, Pabla discloses said network management component is activated whenever said peer to peer networking component is operational (col. 17, lines 54-63; col. 18, lines 60-67; col. 23, lines 24-31).

Regarding claim 13, Pabla discloses said network management component comprises a program data that controls resources of said peer to peer network to perform a network management service (col. 14, lines 44-57; c01.12, lines 55-67; col. 15, lines 58-60; col. 22, lines 56-59; col. 17, lines 29-31 in combination with lines 39-44 and col. 19, lines 32-39).

Regarding claim 14, Pabla discloses said network management component applies policy for determining a mode of operation of said first computer entity in relation to said second computer entity (col. 13, lines 9-12; 51-66; col. 17, lines 29-31).

Regarding claim 15, Pabla discloses said network management component operates to: communicate with a plurality of other computer entities of said network for sending and receiving policy data concerning an .operational policy towards said second computer entity (Figs. 1B and 10; col. 15, lines 50-57; col. 13, lines 51-57; col. 16, lines 61-62; col. 17, lines 29- 34 in combination with col. 54-56) and determine, from a consideration of policy data received from said other computer entities, a global policy to be adopted by each computer entity in said network, towards said computer entity (col. 13, lines 55-57;.col. 18, lines 26-39).

Regarding claim 16, the claim includes the features corresponding to subject matter mentioned above to the rejected claim 1, and is applicable hereto.

Regarding claim 17, Pabla discloses a method performed by a first computer entity (see Figs. 1B and 10), said method comprising: operating a peer to peer protocol for enabling said first computer entity to utilise a resource of said a second computer entity in a peer to peer network, and for enabling said second computer entity to utilize a resource of said first computer entity in said peer to peer network (col. 13, lines. 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and managing said second computer entity (Fig. 13; col. 20, lines 58-63; col. 21, lines 13- 16), in cooperation with a third computer entity in said peer to peer network.

Regarding claim 18, Pabla discloses the computer entity automatically operates said process for managing at least one other computer entity, in response to receipt of a service request from at least one of said plurality of computer entities, not including said computer entity itself (Col. 1, lines 32 –34, Fig . 13 , Col. 18, lines 17 –32, Col. 20, lines 44 – 63 and Col. 21, lines 13 –16).

Regarding claim 19, Pabla discloses a method for controlling a computer entity to participate in a peer to peer network of a plurality of computer entities (Fig. 6 and Col. 13, lines 6 –13), said method comprising:

operating a peer to peer protocol for enabling said computer entity to utilize resources of at least one other said computer entity of said network, and for enabling at least one other said computer entity of said network to utilize resources of said computer entity (Col. 13, lines 17 –25 and Col. 19, lines 32 –40).

operating said process for managing at least one other computer entity, in response to receipt of a service request from a third computer entity in said peer to peer network (Fig. 13, Col. 20, lines 44 – Col. 21, lines 16).

Regarding claim 20, Pabla discloses a computer entity (Fig. 1B, 104) comprising:

a peer to peer networking component for allowing said computer entity to engage other computer entities on a peer to peer basis (Col. 12, lines 36 –67, Col. 20, lines 33 – 43, Col. 25, lines 44 –52).

a network management component for enabling a said computer entity to participate in management of a peer to peer network (Fig. 13, Col. 20, lines 58 –63)

the network management component is configured to operate a process for managing a second computer entity in said network in response to receipt of a service request from a third computer entity in said peer to peer network(Fig. 13, Col. 21, lines 13- 16and Col. 19, lines 32 –39).

Regarding claims 21-26, Pabla discloses considering whether said second computer entity allows said first computer entity to utilise said resource of said second computer entity (see fig. 7; col. 10, lines 29-66, illustrates the first peer requests or desires to establish a peer to peer secured session to communicate and/or exchange data with the second peer).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over Pabla in view of Gleichauf, and further in view of Golle (Incentives for Sharing in Peer-to-Peer Networks, 2001, Computer Science Department, Stanford University).

9. Regarding claim 4, Pabla discloses managing said second computer entity (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43; co. 21, lines 13-16) comprises a process selected from the group consisting of: controlling access by said second computer entity to a communal resource stored on said first computer entity (col. 13, lines 9-14; col. 19, line 66-col. 20, line 2; col. 15, lines 42-44; col. 18, lines 55-59);

Pabla doesn't explicitly disclose placing said second computer entity in quarantine; or applying a charge for utilisation by said second computer entity of a communal resource.

Gleichauf teaches placing said second computer entity in quarantine (col. 3, line 63-col. 4, line 11; col. 2, lines 5-10). However, Gleichauf doesn't teach applying a charge for utilisation by said at least one other computer entity of a communal resource.

Golle teaches applying a charge for utilisation by said second computer entity of a communal resource (page 5, lines 36-38, page 1, lines 25-34).
Therefore, it would have been obvious to one ordinary Skill in the art at the time the invention was made to use the method of placing an infected computer in quarantine and charging a peer or user for using a resource as taught by Gleichauf and Golle, respectively into the peer-to-peer network of Pabla in order to prevent those hackers,

which could cause damage, from penetrating a network undetected, and to increase the system's value to its users and so make it more competitive with other commercial P2P systems.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dady Chery whose telephone number is 571-270-1207. The examiner can normally be reached on Monday - Thursday 8 am - 4 pm ESt.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dady Chery 01/22/2008

11.

RICKY Q. NGO
SUPERVISORY PATENT EXAMINER